

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELIZABETH FISHER, et ano.,

Plaintiffs,

-against-

15-cv-0955 (LAK)

CYNTHIA TICE,

Defendant.

-----x
ORDER
(Corrected)

LEWIS A. KAPLAN, *District Judge*.

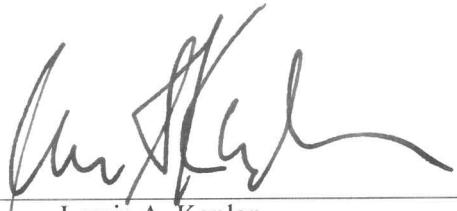
Defendant moves for summary judgment dismissing the complaint as to both plaintiffs and for Rule 11 sanctions. In a thorough report and recommendation dated July 5, 2016, Magistrate Judge Debra Freeman has recommended that the motion for summary judgment be granted in all respects and that the motion for sanctions be denied. Plaintiffs object to the recommendation with respect to the motion for summary judgment.

The Court has reviewed the parties' submissions and the report and recommendation with care. It finds no error of fact or law. Among other things, it shares the magistrate judge's view that an agreement to share both profits and losses is an essential element of a joint venture under the law of New York. *E.g., SCS Communications, Inc. v. Herrick Co., Inc.*, 360 F.3d 329, 341 (2d Cir. 2004) (applying New York law); *Itel Containers Int'l Corp. v. Atlanttrafik Express Serv. Ltd.*, 909 F.2d 698, 701 (2d Cir. 1990) (applying New York law); *Int'l Equity Investments, Inc. v. Opportunity Equity Partners Ltd.*, 472 F. Supp.2d 544, 552 (S.D.N.Y. 2007) (applying New York law).

Accordingly, defendant's motion for summary judgment dismissing the complaint [DI 40] is granted, substantially for the reasons set forth in the report and recommendation and, in addition, defendant's response to plaintiffs' objections to the report and recommendation. Her motion for sanctions [DI 58] is denied, substantially for the reasons given by Magistrate Judge Freeman. The Clerk shall enter judgment and close the case.

SO ORDERED.

Dated: September 4, 2016
Corrected: September 7, 2016


Lewis A. Kaplan
United States District Judge

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